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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its fourth session

Note by the Secretary-General

I have the honour to submit to the General Assembly, pursuant to General Assembly resolution 58/246 of 23 December 2003, the report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its fourth session.

* A/59/150.

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I. Introduction

1. In its resolution 56/168, the General Assembly decided to establish the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.

2. In its resolution 58/246, the General Assembly also decided that the Ad Hoc Committee should start the negotiations on a draft convention at its third session and that, prior to its fifty-ninth session, the Ad Hoc Committee should hold two sessions for a duration of 10 working days each in 2004.

II. Organizational matters

A. Opening and duration of the fourth session

3. The Ad Hoc Committee held its fourth session at United Nations Headquarters from 23 August to 3 September 2004. In the course of its session, the Ad Hoc Committee held 20 meetings.

4. The Division for Social Policy and Development of the Department of Economic and Social Affairs acted as the substantive secretariat, while the Disarmament and Decolonization Affairs Branch of the Department for General Assembly and Conference Management served as secretariat of the Ad Hoc Committee.

5. The fourth session of the Ad Hoc Committee was opened by the Chairman of the Committee, Gallegos Chiriboga, Ambassador and Permanent Representative of Ecuador to the United Nations.

B. Officers

6. The following officers continued to serve on the Bureau of the Committee:

Chairman:
Luis Gallegos (Ecuador)

Vice-Chairpersons:
Ivana Grollovà (Czech Republic)
Leslie Gatan (Philippines)
Jeanette Ndhlovu (South Africa)
Carina Mårtensson (Sweden)

C. Agenda

7. At its 1st meeting, on 23 August, the Ad Hoc Committee adopted its provisional agenda, as contained in document A/AC.265/2004/L.3, as follows:

1. Opening of the session.
2. Adoption of the agenda.
3. Organization of work.
4. Consideration of the draft text as contained in the report of the Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights of Persons with Disabilities (A/AC.265/2004/WG.1, annex I) (elements deferred from the third session of the Ad Hoc Committee: title; structure of the convention; part of the preamble; definitions (article 3); and monitoring (article 25)).
5. Consideration of the compilation of proposed revisions and amendments to the draft text of the Working Group as contained in the report of the Ad Hoc Committee on its third session (A/AC.265/2004/5, annex II).
6. Conclusions of the Ad Hoc Committee at its fourth session.
7. Adoption of the report of the Ad Hoc Committee on its fourth session.

D. Documentation

8. The Ad Hoc Committee had before it the following documents:

(a) Provisional agenda and proposed organization of work (A/AC.265/2004/L.3);

(b) List of participants (A/AC.265/2004/INF/2);

(c) Report of the Working Group to the Ad Hoc Committee (A/AC.265/2004/WG.1);

(d) Report of the third session of the Ad Hoc Committee (A/AC.265/2004/5 and Corr.1 and 2);

(e) Letter dated 19 August 2004 from the Permanent Representative of New Zealand to the United Nations addressed to the Secretary-General (A/AC.265/2004/6).

III. Organization of work

9. During its fourth session, the Ad Hoc Committee concluded a first reading of the draft text of the convention as contained in the report of the Working Group (A/AC.265/2004/WG.1) by considering the title, the structure, part of the preamble, definitions (article 3) and monitoring (article 25). The Committee also adopted the organization of work proposed by the Chairman (see annexes II and III) and conducted a review of articles 1 to 15 and 24 bis. The Committee decided to further review the draft convention at its next sessions. On 25 August, the Ad Hoc

Committee had before it the report of the Coordinator on the progress of informal discussions of draft articles 4, 5, 6 and 7 (see annex IV).

IV. Recommendations

10. The Ad Hoc Committee recommends that it continue its work in 2005 and that the dates be included in the relevant resolution to be adopted by the General Assembly in that regard at its fifty-ninth session. The Ad Hoc Committee also recommends that its fifth session be held in New York in January 2005.

11. The Ad Hoc Committee invites members of its Bureau to hold an intersessional meeting regarding the preparation and organization of its fifth session, including the preparation of the provisional agenda, to be issued at least four weeks prior to the fifth session.

12. With regard to accessibility and in accordance with General Assembly resolution 58/246 and decision 56/474, the Committee invites the General Assembly, at its fifty-ninth session, to examine in greater detail the provision of reasonable accommodation for persons with disabilities in order to facilitate accessibility to United Nations premises, technology and documents.

V. Adoption of the report of the Ad Hoc Committee

13. At its 20th meeting, on 3 September 2004, the Committee adopted the draft report on its fourth session (A/AC.265/2004/L.4), as orally amended.

Annex I

Additional list of non-governmental organizations accredited to the Ad Hoc Committee

ABRAR (Sudan)

Australian Federation of Disability Organization

Cerebral Palsy Nigeria

Children's Rights Alliance for England

Equal Opportunities Commission of Hong Kong

Humanitarian Organization for Poverty Eradication

LOTOS Disability Awareness and Learning Center (Azerbaijan)

Secretariat of the African Decade of Persons with Disabilities (South Africa)

Annex II

Organization of work proposed by the Chairman

Date/time	*Programme*
Monday, 23 August	
10 a.m.-1 p.m.	Preamble/title structure
3-6 p.m.	Definitions/monitoring
Tuesday, 24 August	
10 a.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Wednesday, 25 August	
	• Public meeting • Participation by members, observers, intergovernmental organizations and NGOs as well as national human rights institutions
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Thursday, 26 August	
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Friday, 27 August	
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Monday, 30 August	
	Informal consultations • Coordinator • Participation by member States and observers • Presence of intergovernmental organizations, NGOs as well as national human rights institutions
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Tuesday, 31 August	
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis
Wednesday, 1 September	
10 a.m.-1 p.m.	Articles 1-15 and 24 bis
3-6 p.m.	Articles 1-15 and 24 bis

Date/time	*Programme*
Thursday, 2 September	
10 a.m.-1 p.m.	**Articles 1-15 and 24 bis**
3-6 p.m.	**Articles 1-15 and 24 bis**
Friday, 3 September	
	• **Public meeting**
10 a.m.-1 p.m.	**Report of the Coordinator on facilitators' work**
3-6 p.m.	**Conclusion of the fourth session and adoption of report**

Annex III

Statement by the Chairman on the organization of work

1. Following extensive consultations, this is the Chairman's proposal on the organization of work for the fourth session.

2. The first week would be divided into two stages:

- The first one and a half days we would hold a formal plenary meeting to complete the first reading of the text.

- The next three and a half days we would continue the plenary meeting, with the usual methods of work and the participation of intergovernmental organizations, NGOs and national human rights institutions. The meetings would be the formal opportunity for both States and observers, including NGOs and national human rights institutions, to make comments and observations on the proposals that were made during the first reading to articles 1-15 and 24 bis. The Chair would use this meeting to gauge the level of support those proposals received, so that he can identify proposals that attract widespread agreement and those on which opinion is divided.

3. Upon completion, the Chair would adjourn the plenary meeting and invite the Coordinator to conduct informal consultations so that negotiations on articles 1-15 and 24 bis could begin. The informal consultations would operate under the following guidelines.

4. The informal consultations would be held in room 4 under the guidance of the Coordinator. It would be left to his discretion, on consultation with the meeting, how much time to devote to each article and whether to cluster articles together.

5. Intergovernmental organizations, NGOs and national human rights institutions are invited to be present.

6. The Coordinator would aim to make as much progress as possible in that setting. For difficult issues, he may request the individual facilitators who have been appointed to hold smaller informal meetings on those specific issues.

7. The smaller informal meetings would operate under the same guidelines and would report back to the Coordinator.

8. There would be no parallel meetings of the smaller informals and the main informal.

9. Closed meetings may be required at some point.

10. The Coordinator would report back to the Chair in a formal plenary meeting on Friday, 3 September.

11. The present proposal is made on the understanding that articles 15 bis-25 would be treated in the same manner at the next session of the Ad Hoc Committee.

Annex IV

Report of the Coordinator to the fourth session of the Ad Hoc Committee

I. Introduction

1. On 24 August, the Chair of the Ad Hoc Committee invited Ambassador Don MacKay (New Zealand) to coordinate informal discussions on the text of a draft convention. The Chair read a statement outlining the methodology for holding informal discussions (see annex III).

2. Informal meetings were held from 30 August to 3 September. Draft articles 4, 5, 6, and 7 were discussed.

3. Discussions were held with the aim of clearing up as many of the issues concerning the draft articles as possible. Where agreement was reached, it was on the understanding that it was without prejudice to delegations' ability to reconsider the draft articles under discussion at a later stage.

4. The text of draft articles 4 to 7 as they stand at the end of the meeting will be posted on the United Nations Enable web site for the consideration of delegations intersessionally.

5. Discussion of the titles of the draft articles was deferred until a later date, pending agreement on whether they should remain in the final text or exist merely as working titles to facilitate negotiations.

6. In order to maintain the momentum of the informal discussions, the Coordinator recommended that informal discussions on draft articles 1 to 15 continue at the next session of the Ad Hoc Committee.

II. Summary of discussions on draft article 4

7. There was general agreement on the following points for draft article 4:

- The Ad Hoc Committee should consider the placement of draft articles 4, 5 and 7 in relation to each other at a later stage.
- Draft article 4 should include the wording of article 4 of the Convention on the Rights of the Child. The precise wording of the paragraph was referred to the facilitator's group on this draft article, led by Gustavo Ainchil (Argentina), for further work.
- Draft article 4 should include the concept of progressive realization of economic, social and cultural rights, balanced by the need to implement immediately those obligations that are capable of immediate implementation.
- Non-discrimination is not subject to the doctrine of progressive realization.

8. There was also a substantive discussion on the possibility of including a provision on remedies either in draft article 4 or draft article 9. While there was some support expressed for this, further discussion is required before the issue can be referred to the Facilitator's group.

Paragraph 1

9. There was general agreement that the elements contained in draft articles 13 (d), 19.2 (e), 20 (c) and 21 (f) should be consolidated in subparagraph 1 (f) and a new subparagraph 1 (g). The Facilitator's group was mandated to work on the precise wording of this proposal.

Paragraph 2

10. There was general agreement that:

- The elements in draft articles 5.2 (d), 6 (c), 18 (c), 19.2 (g) and 21 (m) should be consolidated generically in paragraph 2.
- The ultimate placement of paragraph 2 should be discussed at a later stage, along with the other articles related to implementation and monitoring.
- The question of consultation with families and others could not be resolved in the context of draft article 4 but could be considered under other specific articles or under the preamble.

III. Summary of discussions on draft article 5

11. There was general agreement on a number of points concerning draft article 5 as set out below.

Paragraph 1

12. Subparagraph 1 (a) should reflect the text prepared by the Working Group, but with the addition of "and to foster respect for their rights" at the end of the sentence. Various formulations of this phrase were proposed, and these were referred to the Facilitator's group on this draft article, led by Ambassador Rowe (Sierra Leone), for refinement.

13. Subparagraph 1 (b) should reflect the text prepared by the Working Group, but with the addition of the words "in all areas of life" at the end of the sentence.

14. Subparagraph 1 (c) should be redrafted to read:

> "Promote awareness of the capabilities and contributions of all persons with disabilities, and that as members of society they share the same rights and freedoms as all others, and in a manner consistent with the overall purpose of this Convention."

The meeting recognized that further fine-tuning of the paragraph was needed, and it was referred to the Facilitator's group for further discussion.

Paragraph 2

15. Paragraph 2 contained much repetition of paragraph 1 and could either be streamlined or deleted. In either case, several delegations considered that the references to public awareness campaigns and the promotion of awareness in all children and the education system were valuable. They considered that they should be retained in either a streamlined paragraph 2 or in paragraph 1. The Coordinator referred this issue to the Facilitator's group.

16. Should paragraph 2 be deleted, subparagraph 2 (c) should be retained and moved into paragraph 1 to become paragraph 1 (d).

17. The Coordinator also asked the Facilitator's group to elaborate general language on training, without prejudice to decisions on its inclusion and ultimate placement in the text.

IV. Summary of discussions on draft article 6

18. There was general agreement on the following points for draft article 6:

- There should be a provision in the convention on this topic.
- This should be a separate article and not merged with draft article 25 on monitoring.
- The article should be in the section of the convention concerned with implementation and monitoring (possibly in a chapter on those topics). Its ultimate placement was not resolved and some delegations expressed the preference that it remain in the earlier part of the convention.
- The text should be streamlined to read:

> "Where necessary, States parties undertake to collect appropriate information to enable them to formulate and implement policies to give effect to this Convention. The process of collecting and maintaining this information should:
>
> (a) Comply with legally established safeguards to ensure confidentiality and respect for the privacy of persons with disabilities, including legislation on data protection;
>
> (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms;"

- The concept of compliance with the international standards and ethical principles of statistics, as suggested by Landmine Survivors Network, but without listing the elements involved in that concept, should be included. It is possible that briefer wording along the lines of general comment 5 of the Convention on the Rights of the Child, which sets out the objective without being too prescriptive, would suffice. This was referred to the Facilitator's group, led by Leslie Gatan (Philippines).
- A number of delegations raised the importance of the use to which the data might be put. To avoid unbalancing the text, the Coordinator asked two delegations to draft a briefer formulation for a possible paragraph 2, covering a number of issues not covered in paragraph 1.

V. Summary of discussions on draft article 7

Paragraph 1

19. There was general agreement on the substance of paragraph 1, as well as on the addition of one footnote and the referral of a drafting matter to the Facilitator's group on this draft article, led by Stefan Barriga (Liechtenstein).

20. The text was generally agreed as follows:

> "States parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. States parties shall prohibit any discrimination on the basis of disability and guarantee to all persons with disabilities equal and effective protection against discrimination. States parties shall also prohibit any discrimination and guarantee to all persons with disabilities equal and effective protection against discrimination on any other grounds.[a]

21. The Facilitator's group is to consider whether it would be useful to combine the second and third sentence of paragraph 1 without altering their substance.

Paragraph 2 (a)

22. There was general agreement to use the following text, which borrows from the last part of article 1 in the Convention on the Elimination of All Forms of Discrimination against Women (two footnotes were also agreed on):

> "(a) For the purpose of the present Convention, the term 'discrimination on the basis of disability' shall mean any distinction, exclusion or restriction[b] which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on a basis of equality with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[c]

Paragraph 2 (b)

23. The text was generally agreed as follows:

> "(b) Discrimination shall include all forms of discrimination, including direct and indirect discrimination."

24. Some drafting issues may need to be addressed later in relation to whether to amalgamate subparagraphs 2 (a) and (b).

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[a] The list of other grounds for discrimination outlined in the working group text has been deleted. A number of delegations would like to look again at this list in the context of the preamble; in particular, subparagraph (m) covers similar matters. It was agreed that the list should be consistent with existing human rights treaties.

[b] A number of delegations wished to include here the phrase "or denial of reasonable accommodation".

[c] A number of delegations would like to include other aspects within the definition, such as those found within the Inter-American Convention. Particular aspects raised were: record of disability; condition relating to previous disability; or perception of disability, whether past or present.

Paragraph 3

25. It was generally agreed that existing paragraph 3 had a high risk of being misinterpreted. It was agreed to delete paragraph 3 and to add a footnote to the draft article.

26. The text of the footnote was agreed as follows:

> "*Note*: A number of delegations were of the view that there should be a reflection of general comment 18 of the Human Rights Committee, as follows: 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the convention'."

Paragraph 4

27. There was general agreement to use the text set out below as a basis for paragraph 4, with two new footnotes, and to retain footnote 27 of the Working Group draft text. There was also acknowledgement of the need for further drafting consideration and discussion on the placement of the definition, either here or within the definitions section of the draft convention. The text was generally agreed as follows:

> "[d]States parties undertake to take all appropriate steps to ensure that reasonable accommodation is provided; 'reasonable accommodation' to be defined as necessary and appropriate modification and adjustments not imposing a disproportionate burden,[e] where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on a basis of equality with others of all human rights and fundamental freedoms.[f]"

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[d] A preceding phrase that was proposed, and a corresponding one in the Working Group draft, was deleted, which some delegations wish to consider further.

[e] A number of delegations expressed reservations about the phrase "disproportionate burden".

[f] Footnote 27 in document A/AC.265/2004/WG.1 to be inserted here.